

**FINAL ORDER**  
**DATE 10/31/2011**

COMMISSIONER OF \* BEFORE THE  
FINANCIAL REGULATION \* COMMISSIONER OF  
v. \* FINANCIAL REGULATION  
YOUR MORTGAGE LENDER \* CFR FILE NO.: DFR-FY2010-328  
Respondent \* OAH FILE No.: DLR-CFR-76A-11-08235  
\*

\* \* \* \* \*

**PROPOSED ORDER**

The Findings of Fact, Conclusions of Law, and Recommended Order of the Administrative Law Judge dated July 25, 2011, having been received, read and considered, it is, by the Commissioner of Financial Regulation, this <sup>4<sup>th</sup></sup> day of October, 2011,

**ORDERED,**

A. That the Findings of Fact in the recommended decision be, and hereby are, **AFFIRMED;**

B. That the Conclusions of Law in the recommended decision be, and hereby are, **AMENDED** as follows:

The Respondent's conduct demonstrated unworthiness, bad faith, dishonesty, and other qualities that indicated that the business of the licensee has not been conducted honestly, fairly, equitably, and efficiently, in violation of Md. Code Ann. Fin. Inst. Art., § 11-517(a)(5);

The Respondent, in violation of law, demanded, charged, collected, and received “up-front” payments for loan modification services. Md. Code Ann. Real Prop. Art. § 7-307(2) (2010).

The Respondent, in violation of law, induced the Complainants to enter into a foreclosure consulting agreement that lacked required notices of rescission and related information. Md. Code Ann., Real Prop. Art. §§ 7-305 and 7-306(a)(6), (b), and (c) (2010).

The Respondent violated the duty of reasonable care and diligence owed to a homeowner by a foreclosure consultant. Md. Code Ann., Real Prop. Art. § 7-309(b) (2010).

The Respondent induced the Complainants to enter into a consulting contract that did not comply in all respects with the requirements of PHIFA. Md. Code Ann., Real Prop. Art. § 7-307(10) (2010).

The Respondent did not violate the duty of good faith and fair dealing owed to a borrower in connection with a mortgage loan. COMAR 09.03.06.20A.

C. That the Recommended Order be, and hereby is, **AMENDED** as follows:


**ORDERED** that the Respondent is in violation of Md. Code Ann., Fin. Inst. Art., § 11-517(a)(4) and (5); and Real Prop. Art., §§ 7-305, 7-306(a)(6), (b), and (c), 7-307(2) and (10), and 7-309(b);

**ORDERED** that the Respondent is not in violation of COMAR 09.03.06.20A;

**ORDERED** that, in accordance with Md. Code Ann., Fin. Inst. Art., § 2-115(b), the Respondent shall immediately and permanently cease and desist from operating as a mortgage lender or a foreclosure consultant in Maryland, and shall immediately and permanently cease and desist from violating the aforementioned statutory provisions of the Annotated Code of Maryland;

**ORDERED** that the Respondent's Maryland Mortgage Lender's license be **REVOKED**;

**ORDERED** that the Respondent pay to the Commissioner of Financial Regulation a civil penalty of \$10,000 within 30 days of the date of this Proposed Order;

**ORDERED** that the Respondent refund to  the amount of \$2,565.00;

**ORDERED** that the records and publications of the CFR reflect this decision.

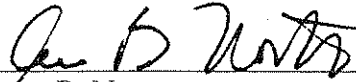
D. Pursuant to §10-220 of the State Government Article, the Commission finds that the Conclusions of Law of the Administrative Law Judge had to be modified. The judge found that the Respondent had violated COMAR 09.03.06.20A, which provides that a mortgage lender licensee has a duty of good faith and fair dealing with a borrower in connection with a mortgage loan. However, as the judge notes in footnote 7 on page 14 of the proposed decision, the Respondent was not acting as a mortgage lender or broker in this transaction. Therefore, this provision of COMAR is not applicable to the Respondent's actions.

Although the judge indicated that the civil penalty was apportioned as \$5,000 for the violation of COMAR 09.03.06.20A and \$5,000 for the violations of PHIFA, the Commissioner has the authority to determine the appropriate penalty based on the facts of the case and the factors set forth in §§ 2-115(e) and 11-517(e) of the Financial Institutions Article. The evidence established violation of two subsections of § 11-517(a), namely (4), which provides for sanctions for violation of another law regulating mortgage lending in the State, i.e. PHIFA, and (5), which authorizes the Commissioner to sanction a licensee that demonstrates unworthiness, bad faith, dishonesty, or any other quality that indicates that the business of the licensee has not been or will not be conducted honestly, fairly, equitably, and efficiently.

Considering the factors relevant in arriving at an appropriate penalty, the Commissioner notes that the Respondent committed multiple serious violations of the PHIFA law, and showed a complete absence of good faith in the transaction with the Complainants, and that the Respondent's actions had devastating impact on the Complainants who relied on and paid a company that did nothing for them, at a time of severe financial distress. The maximum civil penalty of \$5,000 for each violation of § 11-517, for a total of \$10,000, is required under these circumstances in order to properly reflect the nature of the Respondent's conduct in this case. Revocation of the license is also warranted. The Commissioner has also included a provision regarding the time within which the civil penalty must be paid.

Pursuant to COMAR 09.01.03.09, Respondent has the right to file exceptions to the Proposed Order and present arguments to the Commissioner. Respondent has twenty (20) days from the postmark date of this Proposed Order to file exceptions with the Commissioner. COMAR 09.01.03.09A(1). The date of filing exceptions with the Commissioner is the date of personal delivery to the Commissioner or the postmark date on mailed exceptions. COMAR 09.01.03.09A(2).

Unless written exceptions are filed within the twenty (20)-day deadline noted above, this Order shall be deemed to be the final decision of the Commissioner.



---

Anne B. Norton  
Deputy Commissioner of Financial  
Regulation

IN THE MATTER OF  
MARYLAND COMMISSIONER OF  
FINANCIAL REGULATION  
v.  
YOUR MORTGAGE LENDER, INC.

\* BEFORE DAVID HOFSTETTER,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* OAH CASE No: DLR-CFR-76A-11-08235

\* \* \* \* \*

**PROPOSED DECISION**

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
FINDINGS OF FACT  
DISCUSSION  
CONCLUSIONS OF LAW  
RECOMMENDED ORDER

**STATEMENT OF THE CASE**

By Order dated November 4, 2010, the Maryland Commissioner of Financial Regulation (CFR), in the Department of Labor, Licensing and Regulation (DLLR), summarily suspended the Maryland Mortgage Lender License of Your Mortgage Lender, Inc. (Respondent) and ordered the Respondent to cease and desist from acting as a mortgage lender or mortgage broker. On February 2, 2011, the CFR sent to the Respondent a Charge Letter, alleging various violations of the Maryland Mortgage Lender Law (MMLL), Md. Code Ann., Fin. Inst. § 11-501 *et seq.* (2011).<sup>1</sup>

On or about February 7, 2011, the CFR referred the matter to the Office of Administrative Hearings (OAH) for a hearing.<sup>2</sup> On April 28, 2011, I held a hearing at the

---

<sup>1</sup> All subsequent citations to the Financial Institutions Article, will be noted as "FI" and are to the 2011 Replacement Volume.

<sup>2</sup> The CFR delegated to the OAH the authority to issue proposed findings of fact and conclusions of law, and a recommended order. Md. Code Ann., State Gov't. § 10-205 (2009).

OAH in Hunt Valley, Maryland concerning the allegations of the Charge Letter. FI. §§ 11-518 and 11-217. Assistant Attorney General Jedd Bellman appeared on behalf of the CFR. Neither the Respondent, nor anyone authorized to represent the Respondent, appeared at the hearing.<sup>3</sup>

Procedure in this case is governed by the Administrative Procedure Act, Md. Code Ann., State Gov't. §§ 10-201 through 10-226 (2009 & Supp. 2010), OAH's Rules of Procedure, Code of Maryland Regulations (COMAR) 28.02.01, and COMAR 09.01.03.

### ISSUES

1. Did the Respondent fail to comply with the requirements of the MMLL and other applicable law regarding a contract for loan modification services?
2. If any violations are found, what, if any, sanctions and/or monetary penalties, including restitution, should be imposed?

### SUMMARY OF THE EVIDENCE

#### Exhibits

I admitted the following exhibits on behalf of the CFR:

- CFR #1 Notice of Hearing, dated March 2, 2011
- CFR #1A Regular and certified mail envelopes returned to OAH as undeliverable
- CFR #2 Letter of delegation, dated February 7, 2011
- CFR #3 Charge Letter, dated February 2, 2011
- CFR #3A Certified mail receipt and returned mail
- CFR #4 Licensing information, printed April 20, 2011
- CFR #5 Licensing information, printed January 31, 2011

---

<sup>3</sup> The Respondent's failure to appear is discussed below.

- CFR #6 Business Entity Information, State of Nevada, printed February 2, 2011
- CFR #6A Business Entity Information, State of Nevada, printed April 20, 2011
- CFR #7 Business Entity Information, State of California, printed January 31, 2011
- CFR #7A Business Entity Information, State of California, printed April 20, 2011
- CFR #8 Business Entity Information, Maryland Department of Assessments and Taxation, printed April 20, 2011
- CFR #9 Articles of Incorporation, State of Nevada, filed November 2, 2006
- CFR #9A Certificate of Good Standing, State of Nevada, dated January 6, 2009
- CFR #9B Pages from Respondent's website, undated
- CFR #9C Information from Better Business Bureau website, undated
- CFR #9D Summary Order to Cease and Desist, dated November 4, 2010
- CFR #9E Notice of Cancellation/Termination of Bond, dated July 12, 2010
- CFR #9F Liberty Mutual Insurance Company, Bond Documentation, various dates
- CFR #10 Investigation Report, dated January 25, 2011
- CFR #11 Letter from Lana and Richard Berry to the CFR, dated January 26, 2010
- CFR #11A Partial loan modification application and documentation, various dates
- CFR #11B Bank statements, various dates
- CFR #11C Letter from American Home Mortgage, Inc. to [REDACTED] dated December 21, 2009
- CFR #11D Letter from Attorney David Folin to [REDACTED] dated March 12, 2010



The Respondent did not appear and did not offer any exhibits.

### Testimony

The following witnesses testified on behalf of the CFR:

- Calvin I. Wink, Jr. Enforcement Investigator, DLR<sup>4</sup>
- [REDACTED] homeowner
- [REDACTED] homeowner

No witnesses appeared on behalf of the Respondent.

### FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. At all times relevant, the Respondent was duly licensed by the CFR as a Maryland mortgage lender, holding license no. 06-19037.
2. The Respondent is a Nevada corporation, with principal offices in Woodland Hills, California.
3. The Respondent's license was issued on October 21, 2009 and expired on December 31, 2010. The Respondent has not sought to renew its license.
4. At all times relevant, [REDACTED] (collectively, the Complainants) owned a home at 216 Dale Road, Pasadena, Maryland.
5. The Complainants' home was subject to a mortgage held by American Home Mortgage Servicing, Inc. (the Mortgagee).
6. In 2009, the Complainants were experiencing financial difficulties and fell behind in their mortgage payments. In or around 2009, the Mortgagee began foreclosure proceedings related to the Complainant's home.

---

<sup>4</sup> Mr. Wink was admitted as an expert in the fields of general fraud investigations, financial investigations, and mortgage fraud investigations.

7. In early 2010, Complainant [REDACTED] was looking on the internet for information concerning loan modification programs and visited the Respondent's website.
8. After looking at the representations on the Respondent's website, Complainant [REDACTED] called the Respondent and spoke with Michael Morgan, a representative of the Respondent who advised her that the Respondent could help her secure a loan modification.
9. The Respondent promised the Complainants that, in exchange for certain fees, it would obtain a loan modification for the Complainant's from their Mortgagee. Based on these representations, the Complainants filled out various forms on the website and entered into a contract by which it agreed to pay the Respondent for its promised services of obtaining a loan modification.
10. Nowhere on the Respondent's website or on the forms filled out by the Complainants did the Respondent inform the Complainants of any right to rescind their contract with the Respondent.
11. On or about January 13, 2010, the Complainants paid the Respondent \$1,165.00. On or about February 11, 2010, the Complainants paid the Respondent \$1,400.00.
12. In or around January 2010, the Respondent advised the Complainants not to pay their mortgage while the Respondent negotiated a loan modification with the Mortgagee. Based on this advice, the Complainants stopped making mortgage payments.
13. From time to time in January and February 2010, the Complainants spoke with representatives of the Respondent who assured them that the Respondent was in discussions with the Mortgagee concerning loan modification and that these discussions

were going well. These statements were false in that the Respondent never contacted the Mortgagee.

14. By late February or early March of 2010, the Complainants were concerned that they had not received a modification and had not heard from the Mortgagee regarding a modification. The Complainants attempted to contact the Respondent and, in their communications with the Respondent, the Complainants demanded a full refund.

15. The Complainants received no response from the Respondent until they received a letter dated March 12, 2010 from Attorney David Folin of Ventura, California. Folin stated that he did not represent the Respondent, but that he represented Michael Coleman, the owner of the Respondent, and further stated that the Respondent had ceased operations. The letter stated that the financial records of the Respondent were being reviewed to determine if funds were available for a refund to the Complainants.

16. The Complainants never heard again from Attorney Folin or from the Respondent.

17. The Complainants never received any refund from the Respondent or from any other source for their payments to the Respondent.

18. The Respondent never obtained a loan modification for the Complainants and made no effort to obtain a loan modification.

19. On March 18, 2010, the Complainants filed a complaint with the CFR.

## DISCUSSION

### *The Respondent's Failure to Appear*

The Respondent is a Nevada corporation, with principal offices in Woodland Hills, California. CFR Exs. ## 6 and 6A. On March 2, 2011, Notice of the Hearing was

mailed to the Respondent by first class and certified mail at its address of record with the CFR and the Maryland Department of Assessments and Taxation. Both mailings were returned to OAH by the United States Postal Service as undeliverable, “unable to forward,” suggesting that the Respondent no longer occupied the offices at its address of record. CFR Ex. #1. I concluded from these facts that notice was properly sent to the address of record supplied by the Respondent and determined that it was appropriate to proceed with the hearing in the Respondent’s absence. COMAR 09.01.02.07; COMAR 09.01.02.09.

### *The Burden of Proof*

The CFR, as the moving party on the charges, has the burden to prove by a preponderance of the evidence that the Respondent violated the statutory and regulatory sections at issue. *See* Md. Code Ann., State Gov’t Art., § 10-217 (2009); *Comm’r of Labor and Indus. v. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996).

### *The CFR’s Regulatory Authority*

The CFR has broad powers to oversee the financial and credit service industries and state chartered banking institutions in the State of Maryland. The CFR has the authority to “adopt and enforce regulations reasonably necessary to carry out the authority and responsibilities of the office of Commissioner.” *See* FI § 2-105.1(b). Similarly, the Maryland General Assembly has delegated expansive authority to the CFR to investigate and take enforcement action related to this financial regulatory mission. *See* FI §§ 2-113 – 2-116. Through the promulgation of regulations and the investigative and enforcement powers set forth in specific legislation, including the MMLL, combined with the broad investigative and enforcement powers of the CFR, the CFR is charged

with overseeing the conduct of financial enterprises engaging in business in the State of Maryland, including individuals lending, brokering, and/or originating loans and otherwise working in the mortgage industry.

Based on conduct of a licensee which is in violation of the MMLL or any other law, regulation, rule, or order under the supervision of the CFR, the CFR may take affirmative action to remedy such violation. In furtherance of such remedial action, pursuant to FI § 11-517(a), the CFR may revoke the license of any licensee if the licensee engages, in part, in the following:

\* \* \*

(3) In connection with any mortgage loan or loan application transaction:

- (i) Commits any fraud;
- (ii) Engages in any illegal or dishonest activities; or
- (iii) Misrepresents or fails to disclose any material facts to anyone entitled to that information;

(4) Violates any provision of this subtitle or any rule or regulation adopted under it or any other law regulating mortgage loan lending in the State; or

(5) Otherwise demonstrates unworthiness, bad faith, dishonesty, or any other quality that indicates that the business of the licensee has not been or will not be conducted honestly, fairly, equitably, and efficiently.

In addition, pursuant to FI § 11-517(c), the CFR may enforce the provisions of the MMLL, and applicable regulations, by issuing an order (i) requiring a licensee to cease and desist from any violations of the MMLL and any further similar violations; and (ii) requiring a licensee to take affirmative action to correct the violation, including the restitution of money or property to any person aggrieved by the violation. Additionally, the CFR may impose a civil penalty not exceeding \$5,000 for each violation, as well as \$5,000 for each subsequent violation.

FI § 2-115 sets forth the CFR's general authority to take actions for violations of laws, regulations, rules, and orders over which the CFR has jurisdiction, including violations of the MMLL (in addition to taking any other action permitted by law), providing, in part, as follows<sup>5</sup>:

\* \* \*

(b) *Other authorized actions for violations.*— When the Commissioner determines after notice and a hearing, unless the right to notice and a hearing is waived, that a person has engaged in an act or practice constituting a violation of a law, regulation, rule or order over which the Commissioner has jurisdiction, the Commissioner may in the Commissioner's discretion and in addition to taking any other action authorized by law:

- (1) Issue a final cease and desist order against the person;
- (2) Suspend or revoke the license of the person;
- (3) Issue a penalty order against the person imposing a civil penalty up to the maximum amount of \$1,000 for a first violation and a maximum amount of \$5,000 for each subsequent violation; or
- (4) Take any combination of the actions specified in this subsection.

### *The Charges Against the Respondent*

In its Charge Letter, the CFR alleged that the Respondent violated the MMLL and other relevant laws, as follows:

- (i) by committing fraud, engaging in illegal and dishonest activities, and otherwise misrepresenting and failing to disclose material facts to its clients who were entitled to that information, all in connection with a mortgage loan involving Maryland residential real property; (ii) by violating the MMLL and/or the laws regulating mortgage loan lending in

---

<sup>5</sup> The CFR may revoke a mortgage lender license notwithstanding the fact that it may have expired at the time of a scheduled hearing. Any contrary holding would endorse the absurd result of a licensee avoiding sanction simply by surrendering his license or allowing it to lapse. See *In the Matter of 1<sup>st</sup> Continental Mortgage, Inc.*, CFR-FY2011-050 (Final Order of the Commissioner issued November 10, 2010).

the State of Maryland; and (iii) by otherwise demonstrating unworthiness, bad faith, dishonesty and other qualities that indicate that the business of the Respondent has not been or will not be conducted honestly, fairly, equitably, and efficiently.

CFR Ex. # 3 at 1.

The CFR alleged various violations of the Protection of Homeowners and Foreclosure Act (PHIFA), Md. Code Ann., Real Prop. Art. (RP) § 7-301 *et seq.* (2010) and COMAR as set forth below.

The CFR alleged that the Respondent violated RP § 307(2), which bars “up-front” payments for loan modification services. That section provides that a foreclosure consultant may not “[c]laim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented that the foreclosure consultant would perform.”

The CFR alleged that the Respondent also violated PHIFA by inducing the Complainants to enter into a foreclosure consulting agreement which lacked the notices of rescission and related information required under RP §§ 7-305 and 7-306(a)(6), (b), and (c),

The CFR alleged that the Respondent also violated the duty of care set forth in RP § 7-309(b): “[a] foreclosure consultant owes the same duty of care to a homeowner as a licensed real estate broker owes to a client under § 17-532 of the Business Occupations and Professions Article”<sup>6</sup>

---

<sup>6</sup> The pertinent duty of care in the referenced statute is “[the duty to] exercise reasonable care and diligence.” Md. Code Ann., Business Occupations and Professions Art. § 17-532(c)(vi).

The CFR alleged that the Respondent violated RP § 7-307(10) (“[a] foreclosure consultant may not . . . [i]nduce or attempt to induce any homeowner to enter into a foreclosure consulting contract that does not comply in all respects with [PHIFA]).”

Finally, the CFR alleged that the Respondent violated COMAR 09.03.06.20A, which imposes the following general duty upon licensees:

A licensee has a duty of good faith and fair dealing in communications, transactions, and course of dealings with a borrower in connection with the advertisement, solicitation, making, servicing, purchase, or sale of any mortgage loan[.]

### ANALYSIS

At all times relevant to the alleged conduct described in the Charge Letter, the Respondent was duly licensed by the CFR as a Maryland mortgage lender (License No.: 06-19037). The CFR issued the Respondent a mortgage lender license on October 21, 2009, which expired on December 31, 2010, and no renewal application was ever submitted.

In March 2010, the CFR began an investigation into the business activities of the Respondent as a result of a consumer complaint. Pursuant to the CFR’s inquiry into Respondent’s business activities, the CFR developed reasonable grounds to believe that the Respondent engaged in loan modification, loss mitigation, or similar services related to residential real property (hereinafter “loan modification services”) with Maryland residents, homeowners and/or consumers (hereinafter “Maryland consumers”), which business activities operated as a fraud and resulted in violation of various provisions of Maryland Law, including, but not limited to, the MMLL, the Code of Maryland



Regulations (“COMAR”), and the Protection of Homeowners in Foreclosure Act (“PHIFA”) (Annotated Code of Maryland, Real Property Article (“RP”) § 7-301 *et seq.*).

The facts in this case are not in dispute: The Complainants were victims of a scam perpetrated by the Respondent. Specifically, the Respondent promised the Complainants that, in exchange for an up-front payment, the Respondent would successfully negotiate a loan modification with the Complainants’ Mortgagee. The Complainants paid the Respondent the money requested, but the Respondent did not negotiate a loan modification; indeed, it never even contacted the Mortgagee. This course of action violated multiple provisions of Maryland law and provides an ample basis for the imposition of sanctions against the Respondent.

The evidence established that the Respondent engaged in willful conduct which was intended to deceive and defraud the Complainants and which demonstrated an utter lack of good faith and fair dealings under COMAR 09.03.06.20(A). The record demonstrates that Respondent defrauded the Complainant’s in the amount of \$2,565.00, the amount they paid to the Respondent for its promised services. The Complainants testified that in January 2010, they were in default on their Maryland residential mortgage loan and entered into a loan modification agreement with Respondent. The Complainants testified, and the documentary evidence confirms, that the Complainants paid \$2,565.00 in up-front fees to Respondent in exchange for which Respondent represented that it would be able to obtain a loan modification for the Complainants. The Complainants also credibly testified that they requested a refund of the fees paid, but that the Respondent has yet to provide a refund.

Further, the documentary evidence and the testimony of the Complainants clearly establish that Respondent engaged, directly or indirectly, in acts, practices, or other activities which operated as a fraud or deception with regard to Respondents loan modification services. Respondent's fraudulent, deceptive, and/or willful conduct included the following: it failed to perform those loan modification services for the Complainants which it promised to provide and for which it had collected an up-front fee; it purposely concealed this information when contacted by the Complainants, by intentionally misrepresenting the progress of the consumer's loan modification; it failed to accept telephone calls from the Complainants once that consumer became concerned that Respondent had done nothing to obtain a loan modification on their behalf; and refused to provide a refund to the Complainants when requested.

The CFR's expert, Mr. Wink, credibly testified that, in his expert opinion, the Respondent had perpetrated a "loan modification scam" on the Complainants. He testified that the Respondent's conduct of collecting up-front fees from the Complainants, telling them to cease making payments on their residential loan, not contacting the Mortgagee, misrepresenting the progress of the supposed loan modification, and refusing to provide a refund to the Complainants, were all typical characteristics of this type of fraud.

Such conduct violates Respondent's duty of good faith and fair dealing in its communications and transactions with the Complainants as set forth in COMAR. Pursuant to COMAR 09.03.06.20(A), the CFR has promulgated a good faith and fair dealing requirement upon each and every mortgage lender, which states in part: "[a] licensee has a duty of good faith and fair dealing in communications, transactions, and

course of dealings with a borrower in connection with the advertisement, solicitation, making, servicing, purchase, or sale of any mortgage loan . . .” Respondent’s fraudulent and deceptive business practices frustrated the contractual obligation imposed under the loan modification agreement between the Respondent and the Complainants, and thus constitutes a violation of Respondent’s duty of good faith and fair dealings.

The business activities of the Respondent also violated PHIFA because Respondent acted as a foreclosure consultant, collected an up-front fees without providing any loan modification services to the Complainants, and by perpetrating a loan modification services fraud. More specifically, by entering into an agreement to provide loan modification services pertaining to homeowner-occupied Maryland residential real property with Maryland homeowners in default on their residential mortgage loan, and directing them to stop making payment on that loan, the Respondent acted as a “foreclosure consultant” under PHIFA (as that term is defined at RP § 7-301(c)), as it had entered into a “foreclosure consulting contract” with a homeowner for the provision of “foreclosure consulting services” (as those terms are defined under RP §§ 7-301(d) and (e), respectively). As such, the Respondent was required to comply with all provisions of PHIFA applicable to foreclosure consultants.<sup>7</sup>

Pursuant to RP § 7-309(b), “[a] foreclosure consultant owes the same duty of care to a homeowner as a licensed real estate broker owes to a client under § 17-532 of the Business Occupations and Professions Article” (“BO&P”). The pertinent duty of care in the referenced statute is stated to be “[the duty to] exercise reasonable care and

---

<sup>7</sup> Respondent was not entitled to any exemption under PHIFA. That is, Respondent was not acting as a mortgage lender or broker, i.e. it was not arranging for the refinancing of the Complainants’ mortgage loan. *See* RP § 7-302(a)(5). Instead, Respondent was solely engaged by the Complainants to provide loan modification services – at no point were the Complainants intending to either refinance their residential mortgage loan or utilize Respondent as a lender, broker and/or originator.

diligence.” BO&P § 17-532(c)(vi).

The Respondent failed to comply with the requirements of PHIFA. First, the Respondent violated RP § 7-307(2) by requiring a Maryland consumer to pay up-front fees prior to successfully obtaining a loan modification for that Maryland consumer. The Respondent further violated PHIFA when it breached the duty of reasonable care and diligence required under RP § 7-309(b), by engaging in fraudulent and deceptive loan modification activity related to the Complainants.

The aforementioned violations of PHIFA subject Respondent to the enforcement and penalty provisions of the MMLL, as Respondent’s violations were in connection with a residential mortgage loan transactions, constituted fraudulent, illegal, and dishonest activities, violated Maryland laws and regulations pertaining to mortgage lending in the State, and otherwise demonstrated unworthiness, bad faith, dishonesty, and other qualities indicating that the business of Respondents has not been or will not be conducted honestly, fairly, equitably, and efficiently.

### *Sanctions, Penalties and Refunds*

#### *Revocation*

The CFR argues that Respondent’s Maryland Mortgage Lender License should be revoked pursuant to FI § 11-517(a)(3), FI § 11-517(a)(4), and FI § 11-517(a)(5). The numerous statutory and regulatory violations, and the Respondent’s clear indifference to the consequences, also demonstrate “unworthiness, bad faith, dishonesty” and other qualities that suggest that the Respondent’s business “has not been or will not be conducted honestly, fairly, equitably and efficiently.” FI § 11-517(a)(5).

and regulations, and its manifest indifference to its duty of good faith and fair dealing, harmed the Complainants as well as generally contributing to a negative public impression of the mortgage industry. The CFR did not produce any evidence as to the Respondent's assets or of prior violations, so those factors can not be considered. I agree that based on the facts of this case, the imposition of the penalties requested by the CFR is appropriate.

### Restitution

FI § 11-517(c) provides for the payment of restitution to parties injured by a licensee's violations. The Respondent should be required to provide restitution to the Complainants of \$2,565, the amount the Complainants were induced to pay as part of the Respondent's fraudulent scheme.

### CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Respondent, in violation of law, demanded, charged, collected, and received "up-front" payments for loan modification services. Md. Code Ann., Real Prop. Art. § 307(2) (2010);

I further conclude as a matter of law that the Respondent, in violation of law, induced the Complainants to enter into a foreclosure consulting agreement which lacked required notices of rescission and related information. Md. Code Ann., Real Prop. Art. §§ 7-305 and 7-306(a)(6), (b), and (c) (2010);

I further conclude as a matter of law that the Respondent violated the duty of reasonable care and diligence owed to a homeowner by a foreclosure consultant. Md. Code Ann., Real Prop. Art. § 7-309(b) (2010);

Furthermore, COMAR 09.03.06.20A imposes the following general duty upon licensees:

A licensee has a duty of good faith and fair dealing in communications, transactions, and course of dealings with a borrower in connection with the advertisement, solicitation, making, servicing, purchase, or sale of any mortgage loan[.]

Clearly, the Respondent did not conduct itself in conformity with this duty.

As Respondent's fraudulent and deceptive loan modification services activity violates the MMLL, COMAR 09.03.06.20(A), and PHIFA, as well as other laws and regulations, the Respondent's conduct fully justifies the CFR's request, which, if granted, will serve to protect the public. For all these reasons, I find that revocation of the Respondent's mortgage lender license is appropriate.

#### Penalties

As permitted by sections 2-115(b)(3) and 11-517 (c) of the FI Article, the CFR seeks a maximum civil penalty of \$10,000.00 against the Respondent, apportioned as \$5,000.00 for the violation of COMAR 09.03.06.20A and \$5,000.00 for the various PHIFA violations.

With regard to the civil penalty factors under sections 2-115(c) and 11-517(e) of the FI Article, the CFR argues that the violations were serious. I agree. The Respondent's actions were deliberate, willful and done with the intent to defraud. Moreover, the Respondent exhibited a complete absence of good faith: The Respondent did not cooperate with the CFR's investigation, never produced records as required, and failed to appear at the hearing.

As to the deleterious effect of the violations on the public and the mortgage industry, it is obvious that the Respondent's failure to adhere to the governing statutes

I further conclude as a matter of law that the Respondent, in violation of law, induced the Respondents to enter into a consulting contract which did not comply in all respects with the requirements of PHIFA. Md. Code Ann., Real Prop. Art. § 7-307(10) (2010);

I further conclude as a matter of law that the Respondent violated the duty of good faith and fair dealing owed to a borrower in connection with a mortgage loan.

COMAR 09.03.06.20A

**RECOMMENDED ORDER**

**I RECOMMEND** that the Commissioner of Financial Regulation:

**ORDER** that the Respondent cease and desist from operating as a mortgage lender or foreclosure consultant in Maryland;

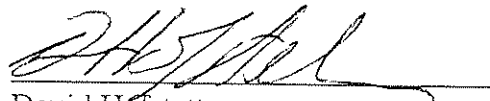
**ORDER** that the Respondent's Maryland Mortgage Lender's License be revoked;

**ORDER** that the Respondent pay to the Commissioner of Financial Regulation a civil penalty of \$10,000;

**ORDER** that the Respondent refund to [REDACTED] the amount of \$2,565.00.

**ORDER** that the records and publications of the Commissioner of Financial Regulation reflect this decision.

July 25, 2011  
Date Decision Mailed

  
\_\_\_\_\_  
David Hofstetter  
Administrative Law Judge

DH/rbs  
Doc #124788

IN THE MATTER OF  
MARYLAND COMMISSIONER OF  
FINANCIAL REGULATION  
v.  
YOUR MORTGAGE LENDER, INC.

\* BEFORE DAVID HOFSTETTER,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* OAH CASE No: DLR-CFR-76A-11-08235

\* \* \* \* \*

FILE EXHIBIT LIST

I admitted the following exhibits on behalf of the CFR:

- CFR #1 Notice of Hearing, dated March 2, 2011
- CFR #1A Regular and certified mail envelopes returned to OAH as undeliverable
- CFR #2 Letter of delegation, dated February 7, 2011
- CFR #3 Charge Letter, dated February 2, 2011
- CFR #3A Certified mail receipt and returned mail
- CFR #4 Licensing information, printed April 20, 2011
- CFR #5 Licensing information, printed January 31, 2011
- CFR #6 Business Entity Information, State of Nevada, printed February 2, 2011
- CFR #6A Business Entity Information, State of Nevada, printed April 20, 2011
- CFR #7 Business Entity Information, State of California, printed January 31, 2011
- CFR #7A Business Entity Information, State of California, printed April 20, 2011
- CFR #8 Business Entity Information, Maryland Department of Assessments and Taxation, printed April 20, 2011



- CFR #9 Articles of Incorporation, State of Nevada, filed November 2, 2006
- CFR #9A Certificate of Good Standing, State of Nevada, dated January 6, 2009
- CFR #9B Pages from Respondent's website, undated
- CFR #9C Information from Better Business Bureau website, undated
- CFR #9D Summary Order to Cease and Desist, dated November 4, 2010
- CFR #9E Notice of Cancellation/Termination of Bond, dated July 12, 2010
- CFR #9F Liberty Mutual Insurance Company, Bond Documentation, various dates
- CFR #10 Investigation Report, dated January 25, 2011
- CFR #11 [REDACTED] to the CFR, dated January 26, 2010
- CFR #11A Partial loan modification application and documentation, various dates
- CFR #11B Bank statements, various dates
- CFR #11C Letter from American Home Mortgage, Inc. to [REDACTED] dated December 21, 2009
- CFR #11D Letter from Attorney David Folin to [REDACTED] dated March 12, 2010

The Respondent did not appear and did not offer any exhibits.